mensem and he estimated the present loss of support suffered by his dependants as $500 *per mensem*. I agree that this is probably true as at the date of death. I also agree that a period of fourteen years is reasonable to work on as his probable working life, bearing in mind all possible vicissitudes. I do, however, consider that $500 *per mensem* as the average loss likely to be suffered by the dependants over fourteen years is excessive in view of the very precarious nature of his livelihood. I consider a figure nearer $400 *per mensem* would be more realistic.

Certain benefits which accrued to the dependants by the death of the deceased must be taken into consideration. The deceased left a motor-car worth about $2,000 and stock worth about $1,000. I consider that if the business had continued in the ordinary way and finally come to an end with the husband's retirement, there would have been no car and no stock at his death.

There must also be taken into consideration the fact that the widow, although she still had to pay off the mortgage on the house, would have that part of the house which was formerly used as business premises available for subletting, and also that although she, as a widow, has very little chance of remarrying, there is perhaps now some chance of her doing so in view of the fact that she will have control of a house. The house itself from the insurance figure appears to be worth more than its bare mortgage figure of $15,000.

After making due allowance for the motor-car, stock, house, prospect of remarriage and common law damages for the widow, I also consider that $38,000 is a fair figure for the Civil Law Enactment damages. I agree with the distribution proposed by the learned Chief Justice and also with his award of and comments on costs.

Order accordingly.

Solicitors: *M. Ismail; Murugason & Co.*

Re MAT JUNUS BIN RIDU

[R.Cr.J. (Rigby J.) March 4, 1958]

[Penang — Criminal Revision No. 5 of 1958]

Criminal Law and Procedure — Possession of property reasonably suspected of being stolen or fraudulently obtained — Previous convictions — Conviction and sentence — Minor Offences Ordinance, 1955, s.29(1) and (5) — Charge — Notice.

This Revision arose on the application of the Deputy Public Prosecutor for the purpose of regularising the conviction and sentence of the prisoner who was charged with and convicted of the offence of possession of property reasonably suspected of being stolen or fraudulently obtained under section 29(1) of the Minor Offences Ordinance and sentenced to 4 months' imprisonment.

Under section 29(1) the maximum sentence for the offence is 3 months' imprisonment or a fine not exceeding $100 or both. In this case the prisoner had admitted to 7 previous convictions, which rendered him liable to the enhanced penalty provided by section 29(5) of the Ordinance.

On revision the learned Judge directed that the conviction as recorded against the prisoner under section 29(1) be expunged from all Police and Prison records and a conviction under section 29(5) be substituted therefor.

In the course of his judgment, the Judge dealt with the practical question as to the proper subsection which an offender with previous convictions should be charged. To charge him under section 29(5) would be tantamount to disclosing to the Magistrate the fact of his previous convictions, which would be clearly undesirable if the offender claims trial to the charge. On the other hand, if he is charged under section 29(1) and pleads guilty, can his plea be then recorded as being made under section 29(5)? The learned Judge suggested that the proper course would be to serve upon the accused, contemporaneously with the charge, a notice to the following effect:

> "Take notice that at your trial on the charge annexed hereto under section 29(1) of the Minor Offences Ordinance you are liable, upon conviction, to the enhanced penalties provided by section 29(5) of the said Ordinance by reason of the fact that you have been previously convicted of an offence punishable under this section (or Chapter XII or Chapter XVII of the Penal Code). *" (* whichever is applicable).

REVISION IN CHAMBERS.

Rigby J.: The prisoner in this case pleaded guilty to the charge preferred against him of possession of property reasonably suspected of being stolen or fraudulently obtained, and having thereby committed an offence punishable under section 29(1) of the Minor Offences Ordinance, 1955.

The brief facts of the case were that he was apprehended by a Police patrol at 6.45 a.m. in possession of a sack containing 2 fowls. Upon questioning by the Police he admitted that he had stolen them; but the Police were unable to trace or find the owners.

The Magistrate sentenced him to four months imprisonment as from the date of his arrest.

The maximum term of imprisonment for an offence under section 29(1) is three months' imprisonment or a fine not exceeding $100 or both. The prisoner, however, had no less than seven previous convictions over the last seven

years, five of which involved dishonesty — and all of which he admitted. When imposing the sentence the learned Magistrate no doubt had in mind section 29(5) of the Ordinance. That subsection provides:—

"29. (5). Any person who —

(a) having been convicted of an offence punishable under this section or under Chapter XII or Chapter XVII of the Penal Code; .....

is subsequently convicted of an offence punishable under this section shall be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment."

The case was referred to me by the learned Deputy Public Prosecutor for the purpose of regularising the conviction and sentence. It is clear that the offender should have been charged under section 29(5) and not section 29(1) of the Ordinance. I am informed that the offender has now served his sentence, subject to the period of remission he has earned, and was, in fact, discharged from prison on the 20th January, 1958. He may, indeed, consider himself extremely fortunate that he was not sentenced to a longer period of imprisonment.

The practical question does arise, however, as to what is the proper subsection under which an offender with previous convictions should be charged for an offence allegedly committed under this section. If he is charged with an offence rendered punishable under section 29(5), of necessity, it brings to the notice of the Magistrate the fact that he is a person with one or more previous convictions. This would seem clearly undesirable if the offender claims trial to the charge. On the other hand, if he is charged with the offence alleged in section 29(1) and thereby rendered liable, upon conviction, to the penalty set out in that section, upon his plea of guilty to the charge preferred under that subsection, can the subsection be properly altered after his plea of guilty so as to render him liable to the enhanced penalty under section 29(5)? It may reasonably be argued, at least as a theoretical proposition, that an offender with one or more previous convictions might well be prepared to plead guilty to the charge as preferred against him for an offence punishable in the manner provided under section 29(1), yet would be most reluctant to plead guilty to that same offence, if it was brought on a charge rendered punishable under section 29(5), thereby rendering him liable to the enhanced penalties provided for by that subsection.

I would venture to suggest that the proper course where a charge is preferred against a person for an offence under section 29(1), who is known to have previous convictions, is that contemporaneously with the charge a notice is served upon him in words approximate to the following effect:—

"Take Notice that at your trial on the charge annexed hereto under section 29(1) of the Minor Offences Ordinance you are liable, upon conviction, to the enhanced penalties provided by section 29(5) of the said Ordinance by reason of the fact that you have been previously convicted of an offence (a) punishable under this section (or Chapter XII or Chapter XVII of the Penal Code). *

(* state whichever applicable)."

The advantages of such a notice is that on the one hand it gives full warning to the offender of the additional penalty to which he is liable upon conviction by reason of his previous conviction or convictions, whilst on the other hand, it conceals from the Magistrate, in the event of a plea of not guilty, the fact of any such previous conviction; which would, of course, not have been the case, if the charge had stated that it was laid under section 29(5) of the Minor Offences Ordinance.

I direct that the conviction as recorded against the prisoner under section 29(1) be expunged from all Police and Prison records and a conviction under section 29(5) be substituted therefor.

Order accordingly.

ARUMUGAM s/o SEENIVASAGAM v. SINNAMAH (f)

[O.C.J. (Hepworth J.) February 26, 1959]

[J.B. — Originating Summons No. 24 of 1958]

Guardianship of Infant — Interference with parental rights — Grounds for — Common law and equity — Civil Law Ordinance, 1956, s.3(1) & (2).

The applicant in this case was the father of a female infant who was born some time in 1942, her mother dying shortly afterwards from complications consequent on the birth. The respondent, who was present and assisted at the birth at the request of the infant's mother, agreed a few days later at the applicant's request to look after the baby and the applicant thereupon handed her over to the respondent together with her birth certificate. Ever since then the infant has been living with and has been looked after by the respondent. On a Summons issued in which the applicant asked for an order that the respondent do surrender the infant to his custody,